

United States District Court
IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION
NOV 21 2012

CV H-12-3086

UNITED STATES, David J. Gabley, Clerk of Court
Respondent,)
)
) Civil Action No. 4:10-cr-512-1
v.)
) Motion for Court to Review Petitioner's
) 28 USC §2255 Motion.
THOR ALEXANDER MORRIS,)
Petitioner.)
_____)

COMES NOW, the Petitioner, by way of pro se, in the above titled action and respectfull motions this Court to place his §2255 motion before a magistrate judge for initial review consistent with 28 USC §2255 and Rule 4(b) of the Federal Rules Governing Section 2255 Proceedings For the United States District Courts.

I. PERTINENT BACKGROUND INFORMATION

Petitioner is currently serving a sentence of 37 months incarceration, 3 years of supervised release, and \$100 special assessment fee for a single count of Fraud and Related Activity in Connection with Computers.

On 4/27/2012, Petitioner filed a motion under 28 USC §2255, seeking habeas corpus relief on three grounds of ineffective assistance of counsel: (1) Counsel was ineffective for failing to object to AUSA Feazel's breach of plea agreement; (2) Counsel was ineffective for failing to object to the District Court not applying a three point sentencing reduction under USSG §2X1.1; and (3) Counsel was ineffective for failing to object to the two point sentencing enhancement Petitioner received under USSG §3B1.1(c).

Petitioner also filed a motion seeking copies under 28 USC §753(f), and a motion to proceed in forma pauperis for purposes of 28 USC §753(f). [See D.E. 68].

As of the filing of this instant motion, this Court has yet to rule on any of the above listed motions.

On May 7, 2012, Petitioner's Motion to Voluntarily Dismiss his direct appeal was granted by the Fifth Circuit Court of Appeals. [See D.E. 69]. Petitioner did not file a petition for certiorari to the Supreme Court; thus, Petitioner's conviction became final on August 5, 2012, when his time in which to file a petition for certiorari expired.

II. THE INTEREST OF JUSTICE FAVORS A RULING BY THIS COURT ON PETITIONER'S 28 USC §2255

A. Rule 4(b) of the Federal Rules Governing Section 2255 Proceedings for the United States District Courts (henceforth "Rule 4(b)")

Rule 4(b) states, in pertinent part:

"The judge who receives the [§2255] motion must promptly examine it. If it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief, the judge must dismiss the motion and direct the clerk to notify the moving party. If the motion is not dismissed, the judge must order the United States attorney to file an answer, motion, or other response within a fixed time, or to take other action the judge may order." (emphasis added).

In Petitioner's §2255 motion, he cites his PSI, criminal complaint, Rule 11 transcripts, sentencing transcripts, as well as settled Supreme Court and Fifth Circuit precedent. This is Petitioner's first §2255, he is not barred by the plea agreement from filing a §2255 (see transcripts

for Rule 11 hearing on 1/18/2011), and he has filed this §2255 well before the one year deadline imposed by AEDPA, August 5, 2013. Thus, it cannot be said that it plainly appears that Petitioner is not entitled to relief; and the US attorney should be ordered to file an answer to Petitioner's §2255 motion.

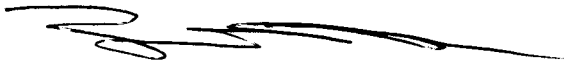
B. A Rule 4(b) Review Should be Conducted with the Utmost Urgency

As Petitioner lays out in his §2255 motion, had his counsel been constitutionally effective, it is reasonably probable that Petitioner would have received a sentence of 21 months of probation, instead of the current sentence of 37 months incarceration. Thus, any additional delay in the instant §2255 proceedings only further subjects Petitioner to a period of incarceration, rather than a much less harsh period of probation. It should also be noted that Petitioner has served 19 months of incarceration (including good time credit), making it likely that he will serve more time than the corrected guidelines calculation (Criminal History I, 16 Points: 21-27 months) recommend.

III. CONCLUSION

WHEREFORE, premises considered, Petitioner prays that this Court find it is in the interest of justice to conduct a Rule 4(b) review on Petitioner's §2255 motion. [D.E. 67, filed 4/26/2012].

Respectfully Submitted,
This 13th day of November, 2012.



Thor Alexander Morris 33297-279
FPC Bennettsville
PO Box 52010
Bennettsville, SC 29512-5220

CERTIFICATE OF SERVICE

I, Thor Alexander Morris, hereby certify that on the below listed day I caused the foregoing "Motion for Court to Review Petitioner's 28 USC §2255 Motion" to be served on the below listed parties by way of First Class USPS Mail:

Financial Litigation
US Attorney's Office
Southern District of Texas
PO Box 61129
Houston, TX 77208

Respectfully Submitted,
This 13th day of November, 2012.



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David A. Wiley, Clerk of Court

Chambers of Hon. Judge Vanessa Gilmore
US District Court
515 Rusk Ave.
Houston, TX 77002

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